

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW JERSEY

3 : CIVIL ACTION NUMBER:
4 : 19-md-02875
5 :
6 :
7 :
8 : STATUS CONFERENCE
9 :
10 :
11 :
12 :
13 :
14 :
15 :
16 :
17 :
18 :
19 :
20 :
21 :
22 :
23 :
24 :
25 :

IN RE: VALSARTAN PRODUCTS
LIABILITY LITIGATION

Mitchell H. Cohen Building & U.S. Courthouse
4th & Cooper Streets
Camden, New Jersey 08101
February 1, 2024
Commencing at 1:07 p.m.

B E F O R E: THE HONORABLE ROBERT B. KUGLER,
UNITED STATES DISTRICT JUDGE

THOMAS I. VANASKIE (RET.)
SPECIAL MASTER

A P P E A R A N C E S:

MAZIE SLATER KATZ & FREEMAN, LLC
BY: ADAM M. SLATER, ESQUIRE
BY: CHRISTOPHER GEDDIS, ESQUIRE
103 Eisenhower Parkway
Roseland, New Jersey 07068
For the Plaintiffs

KANNER & WHITELEY, LLC
BY: CONLEE S. WHITELEY, ESQUIRE
BY: DAVID J. STANOCH, ESQUIRE
701 Camp Street
New Orleans, Louisiana 70130
For the Plaintiffs

Sharon Ricci, CRR, RMR, Official Court Reporter
Sharon.ricci.usdcnj@gmail.com
(267) 249-8780

Proceedings recorded by mechanical stenography; transcript
produced by computer-aided transcription.

A P P E A R A N C E S (Continued):

KIRTLAND & PACKARD LLP
BY: BEHRAM V. PAREKH, ESQUIRE
1638 South Pacific Coast Highway
Redondo Beach, California 90277
For the Plaintiffs

GREENBERG TRAURIG LLP
BY: VICTORIA DAVIS LOCKARD, ESQUIRE
BY: STEVEN M. HARKINS, ESQUIRE
3333 Piedmont Road, NE, Suite 2500
Atlanta, Georgia 30305

BY: GREGORY E. OSTFELD, ESQUIRE
77 West Wacker Drive, Suite 3100
Chicago, Illinois 60601
For the Defendants Teva Pharmaceutical Industries Ltd.,
Teva Pharmaceuticals USA, Inc., Actavis LLC,
and Actavis Pharma, Inc.

HILL WALLACK, LLP
BY: ERIC I. ABRAHAM, ESQUIRE
21 Roszel Road
Princeton, New Jersey 08540
For the Defendants Hetero Drugs and Hetero Labs

ULMER & BERNE LLP
BY: JEFFREY D. GEOPPINGER, ESQUIRE
600 Vine Street, Suite 2800
Cincinnati, Ohio 445202
For the Wholesaler Defendants and AmerisourceBergen

BY: KARA KAPKE, ESQUIRE
11 S. Meridian Street
Indianapolis, Indiana 46204
For the Retailer Defendants and CVS Pharmacy, Inc., and
Rite Aid Corporation

A P P E A R A N C E S (Continued):

HUNCH BLACKWELL LLP
BY: ABRAHAM JAMES SPUNG, ESQUIRE
1801 Wewatta Street
Suite 1000
Denver, Colorado 80202
For the Defendants Cigna Corporation, Express Scripts
Holding Company, and Express Scripts, Inc.

ALSO PRESENT:

LORETTA SMITH, ESQUIRE
Judicial Law Clerk to The Honorable Robert B. Kugler

LARRY MACSTRAVIC, Courtroom Deputy

1 (Proceedings held via Teams conference before The
2 Honorable Robert B. Kugler, United States District Judge, and
3 Special Master Thoms I. Vanaskie at 1:07 p.m.)

4 (Discussion held off the record.)

5 JUDGE KUGLER: All right. We have -- the defense has
6 the orders to show cause apparently. Who's going to speak on
7 that?

8 MR. HARKINS: Good afternoon, Your Honor. This is
9 Steve Harkins from Greenberg Traurig and the joint defense
10 group. I'll be handling those.

11 JUDGE KUGLER: Mr. Harkins, how are you? Apparently
12 the only one that's unresolved is the Samocha, S-A-M-O-C-H-A,
13 case?

14 MR. HARKINS: That's correct, Your Honor. The other
15 five can be dismissed or withdrawn, and we are asking for an
16 extension of the Samocha matter to the next case management
17 conference.

18 JUDGE KUGLER: Okay. The following cases: Benjamin
19 Andrews; Ocie Mae Haughton, H-A-U-G-H-T-O-N; Robert Kennedy,
20 Tom Davidson; Stelio, S-T-E-L-I-O, Mantalis, M-A-N-T-A-L-I-S,
21 are all orders to show cause are dismissed.

22 Samocha matter will be carried to the next one.

23 Apparently, Mr. Harkins, you have no request for
24 orders to show cause for the next return date; is that correct?

25 MR. HARKINS: That's correct, we have no new requests

1 for this conference.

2 JUDGE KUGLER: So you have ten you want to relist,
3 though. Any updates on those?

4 MR. HARKINS: One update. Number 10 on our list,
5 Bobby Williams, there's been a PFS filed, so we'll remove that
6 and evaluate it through the course.

7 The remaining nine, we would simply carry forward and
8 relist for the next case management conference.

9 JUDGE KUGLER: All right. That's Oswald Anfossi,
10 A-N-F-O-S-S-I; Susan Schaefer; Regina Hill; Anthony Ivers;
11 Jerry Anderson; Mark McNall, M-C-N-A-L-L; Nathaniel Green;
12 Soraya Svoronos, S-V-O-R-O-N-O-S; and Paul Marchionda,
13 M-A-R-C-H-I-O-N-D-A. They will be relisted at the next
14 meeting.

15 Any other matters of this nature to be brought to my
16 attention, Mr. Harkins?

17 MR. HARKINS: Nothing from defense. Thank you, Your
18 Honor.

19 JUDGE KUGLER: I thank you. All right.

20 Mr. Slater, you raised the issue of my reconsideration
21 and vacation of the expert report in this matter. Let me just
22 explain -- in your footnote you point out accurately that you
23 had not attached that, Anderson's earlier class certification
24 report, to this pending motion. That's correct, you did not.
25 It's completely my fault. I just grabbed the wrong one when I

1 was doing it. And, you know, the defense counsel pointed that
2 out, and they're correct about that, and I apologize for that.
3 But, you know, when I make a mistake, we try to fix it as soon
4 as we can.

5 But apparently, Mr. Slater, you said you wanted to
6 talk to defense counsel more about that?

7 MR. SLATER: Your Honor, I'm going to defer to David
8 Stanoch. Mr. Stanoch is handling this specific part of the
9 case. Not to jump out of the way, but Mr. Stanoch is fully
10 familiar with it and ready to address it with Your Honor.

11 MR. STANOCH: Good afternoon, Your Honor.

12 JUDGE KUGLER: Do you want to talk to defense counsel
13 more about it? You indicate that in the letter, that that
14 might be worthwhile. It's up to you.

15 MR. STANOCH: Yes, Your Honor. We didn't want to
16 clutter the docket with more motion practice about this, which
17 was clearly just a clerical oversight, as Your Honor just
18 described. We're happy to talk with defendants. Our issue
19 here is Your Honor's rationale in the original *Daubert* ruling
20 would apply, we think, to the correct liability report. And
21 Your Honor precluded everything except 14 paragraphs from the
22 incorrect class report, but now defendants are, because of --
23 I'm not blaming anyone -- because of the confusion, they're now
24 in a better position with the amended order, because there's
25 paragraphs that are very similar that you had excluded the

1 first time, which is almost identical in both reports, but now
2 they're not excluded.

3 And in Teva's motion, they say we think you should
4 exclude opinion paragraphs, you know, blah, blah, and blah, but
5 now they're not. So we don't want to kick up a lot of dust
6 here, Judge, but Teva is in a better position now sort of
7 through their own mistake than they were when your -- than when
8 they asked for clarification or when your order was doing the
9 ruling.

10 So I'm happy to talk to them, but Teva's response is
11 they think the prior order is vacated completely, there's
12 nothing to talk about. If that's incorrect, I'm happy to talk
13 to them first.

14 JUDGE KUGLER: Well, Mr. Stanoch, it wasn't their
15 mistake, it was mine. And I certainly didn't mean to put
16 anybody in a better position.

17 Talk to them, and if they can't work it out, then just
18 send me a letter and we'll get this straightened out. It's not
19 that big of a deal. Okay?

20 MR. STANOCH: Agreed, Judge. Thank you.

21 JUDGE KUGLER: Another one that it looks like you want
22 me to get involved in is next trial. Mr. Slater raises that in
23 the case.

24 There's a whole lot -- a whole lot of considerations
25 need to go into this next trial issue. Number one, the most

1 important is jurisdiction. I don't know what jurisdiction I
2 have over other cases. You know, we have this direct file
3 order in the case, but no one waived any venue objections. And
4 at the very beginning of this, I suggested that when the day
5 comes, and it is coming when this case gets referred back to
6 the panel for redistribution back to the various districts,
7 we're going to have to make a decision as to where these direct
8 file cases that don't belong in New Jersey have to go.

9 Now, some cases undoubtably will belong in New Jersey,
10 but that doesn't mean that I'm going to have them. If there
11 are cases that remain in New Jersey, we have vicinage rules in
12 our local rules as to which of the three courthouses they're
13 assigned to and they'll be assigned to other judges randomly,
14 so I'm not so sure these are going to be my cases anyway if
15 they remain in Jersey.

16 So perhaps the time is approaching, if it isn't
17 already here, when you need to discuss among yourselves where
18 these cases are going to go back to, particularly these direct
19 file cases for which no one waived their venue or jurisdiction
20 objections.

21 So maybe you should spend some time thinking about
22 that among yourselves. But I think otherwise -- now, if you
23 want to talk about trials, that's fine. I just -- I can't tell
24 you with any confidence that it's going to be before me at the
25 appropriate time. So that's really all I have to say about

1 next trial.

2 But if you want to speak, Mr. Slater, or anyone else
3 wants to speak about next trial, that's fine.

4 MR. SLATER: No, Your Honor. Your guidance is very
5 clear. We believe that the next step would be to start to meet
6 and confer with the defense and see if there's any common
7 ground, and if not, maybe to start, at least start a discussion
8 with Your Honor and methodically talk through these issues that
9 Your Honor is raising, as well as other considerations, and
10 figure out the best way forward.

11 Our hope, obviously, is just that we have the momentum
12 moving forward now, and we're hoping to be able to keep that
13 momentum going from this trial to next and try to cover the
14 other parties. But we take, obviously, to heart what you just
15 said and we understand it, and I think that will be part of our
16 discussion with the defense.

17 JUDGE KUGLER: All right. Anybody on the defense side
18 want to be heard on that issue?

19 MS. LOCKARD: Your Honor, it's Victoria Lockard for
20 the defendants. And we're happy to meet and confer. As you
21 saw in our papers on this, I mean, we do believe that this
22 issue is premature. The parties -- we just heard about this on
23 the defense side on Monday.

24 So, you know, we're -- at this point we're very
25 focused, at least the TPP defendants, on getting the case ready

1 to be tried on March 18th. We think that's what our focus
2 should be on. That's the next step.

3 And, you know, I think it's premature to start setting
4 sequential trials, but I do agree there needs to be a
5 discussion about what will happen to the direct file cases and
6 what the remand picture will look like. So we're, of course,
7 happy to talk with plaintiffs about that.

8 JUDGE KUGLER: Good. Okay.

9 In limine motions, you are working on a date for that,
10 which apparently would provide all the papers to be filed by
11 February 26th in this matter.

12 Any idea how many motions you're contemplating?

13 MR. SLATER: It's still a little bit of a moving
14 target, Your Honor. There's clearly -- and I'm afraid to call
15 them all motions because a lot of them are just issues that
16 kind of dovetail with one another. We've reached agreement on
17 a bunch and we talked through some stipulations that we believe
18 we can work through.

19 I'm hesitant to say a number. It's not two or three,
20 it's not ten. I would think it's probably -- I would say 20 or
21 30 issues. There may be some subparts to them. And I think a
22 lot of them, frankly, we said in our papers, can be dealt with
23 in less than a page. So they're not -- we don't anticipate
24 hundreds of pages of briefing.

25 We know the Court doesn't want it, nor does the Court

1 need that, especially with the familiarity that the Court has
2 with the case and especially in light of all the briefing that
3 Your Honor now has available to you.

4 I don't want to dodge the question out of fear of
5 saying too many, but I think that we're probably talking about
6 20 or 30 issues that you're going to have to look at. And I
7 think that what we've done is to the extent that we're reaching
8 agreement -- and I know that both sides are still going to work
9 on this -- and I can tell Your Honor we're starting to move out
10 of the hedging and holding things in our back pocket phase and
11 things are starting to really be put on the table, which is
12 really helpful, and I think we're still -- there's a few issues
13 where we're getting close to agreeing on a major decision where
14 we can say, okay, we can stipulate to this, but there's things
15 on the edges where one side or the other says we still want to
16 be able to do that.

17 And we're really trying to work through -- my hope is
18 to stipulate to the major issue and preserve the -- what I'll
19 call the edge issues, to say this -- we've agreed on this, but
20 either the plaintiffs or defendants, whoever it is, still
21 believes this should be admissible so it could be a much more
22 narrow dispute.

23 And I think that there's a lot of those -- a lot of
24 the disputed issues are going to fall into that category where
25 we're going to reach some agreements that are going to be more

1 general, but there's going to be some specifics Your Honor will
2 have to hit. I'm hesitant to give examples right now just
3 because the negotiations are ongoing and we're actually getting
4 ready to trade language on proposed stipulations on a bunch of
5 the motions.

6 But I really am optimistic that even where we haven't
7 reached agreement yet on some issues, that the talks that we're
8 going to have on our own separate sides, going back to
9 testimony that one side or the other is saying, well, look at
10 this or look at that, is going to be helpful. And I think that
11 we'll probably agree on more than you might have expected, but
12 not everything, obviously.

13 JUDGE KUGLER: Well, look, just remember -- and I've
14 said this before because you may be disappointed -- many in
15 limine motions are impossible to decide before trial because
16 you don't have the context.

17 So historically I have denied without prejudice many
18 in limine motions in other cases, just waiting and pending to
19 see what the evidence is going to be on it. So I don't want
20 anybody disappointed if that's what happens, but it's a good
21 possibility that's going to happen. But we'll wait and see
22 what you submit and go from there.

23 MR. SLATER: And I can say, Your Honor, I think both
24 sides have been cognizant of that. Your name has come up in
25 our discussions a few times as to what we believe your

1 expectations are going to be. And what we're trying to do is
2 -- I think both sides are trying to do this and have succeeded
3 to a large extent, and the conversations we've had have been
4 really good in focusing the issues down to things that are a
5 little bit more concrete. Because I think both sides are
6 cognizant of what you told us and what you just repeated to us,
7 and both sides have an interest, I think, in trying to make the
8 disputes as concrete as possible so that there's less
9 uncertainty going into trial, understanding your predilection
10 not to deal with something that's ambiguous.

11 So I think we're both trying to work to get really
12 specific so that you'll feel hopefully more comfortable at
13 least resolving more of the issues, rather than having
14 uncertainty that will impede opening statements and some of the
15 questioning of the witnesses and having to not really know
16 where it's going.

17 But we are very cognizant, you've told us that, so
18 we're trying to work with that front and center.

19 JUDGE KUGLER: Okay. Is there anything else that you
20 need me to -- to talk to me about? Otherwise, I'll turn it
21 over -- I think these other issues are for Judge Vanaskie for
22 you to talk about.

23 MR. OSTFELD: Judge, this is Greg Ostfeld for the
24 defendants.

25 Just one question pertaining to the motion in limine.

1 I don't think we've actually set a final pretrial date, which
2 is where I would anticipate you might take argument on the
3 motions in limine, among other issues.

4 Do we want to set that date along with whenever we set
5 the next case management conference date?

6 JUDGE KUGLER: Where are you in preparation of the
7 final pretrial order?

8 MR. SLATER: The truth is, far from being done.
9 That's the honest truth.

10 JUDGE KUGLER: What?

11 MR. SLATER: We're far --

12 JUDGE KUGLER: The plaintiff needs to start the
13 process.

14 So where are you, Mr. Slater, with that process?

15 MR. SLATER: I would say that as far as listing
16 witnesses, we're working on that. Exhibit lists are very far
17 along, and we actually discussed exchange of exhibit list and
18 also segments of the exhibit list the other day, so we're going
19 to start exchanging that probably piece by piece.

20 Stipulated issues we've started to talk about with the
21 defense. And obviously, the flip side being the contested
22 issues. I would say we're probably going to start rolling
23 things out that are in the pretrial order exclusively probably
24 by the beginning of the week next week, and then we'll start to
25 really fill in the rest of the order in earnest.

1 To be honest with you, the summary judgement briefing
2 has enveloped a lot of time for a good part of our team that
3 would have been doing the same at the same time. So I would
4 say at least a week to two weeks before the defense is going to
5 have a really fulsome picture of everything from us.

6 But understanding what Your Honor said, we've had
7 separate talks with the defense and I'm not sure that defense
8 is entirely committed to waiting for our entire pretrial
9 exchange. I think that the way we've been working is to start
10 to exchange the parts of the order with one another and try to
11 make progress as we go so that it's not a question of us
12 dumping it on them and then putting it on them to get back to
13 us, although there's going to be some of that.

14 But we're really trying to work back and forth as much
15 as we can on the pieces of the order.

16 JUDGE KUGLER: Okay. Well, how about from the defense
17 side? What are you up to regarding the pretrial order?

18 MR. OSTFELD: Your Honor, as Mr. Slater said, we all
19 recognize this is a very large undertaking and we aren't
20 waiting for them to send us their stuff. We're working on our
21 own exhibits, we're working on our own witness submissions, our
22 own jury instructions and trial brief, and I think we all
23 acknowledge -- and we've been speaking regularly and
24 collaborating well. This is just a very large and significant
25 undertaking.

1 So, you know, we've at times exchanged sort of
2 optimistic prospects of when we might exchange things, and some
3 of them have worked and some of them have not. But I think
4 it's fair to say that both sides are diligently working at this
5 and we're all doing our best.

6 And I would agree with Mr. Slater, we're probably a
7 ways off. At the last case management conference, Your Honor
8 indicated that the pretrial order submissions would be expected
9 seven days before trial, and we're all very, very cognizant of
10 that deadline and we'll certainly hit that deadline.

11 I think kind of the question is, are things that we
12 need to be getting done in the interim or is there a hearing
13 that we're going to have in the interim on some of these
14 motions, like motions in limine, that would assist the Court
15 and may assist us in finalizing the final pretrial order.

16 JUDGE KUGLER: Well, without seeing the motions, it's
17 really hard to tell you whether or not I need oral argument on
18 in limine motions anyway. All right.

19 Well, you know what you need to do on the pretrial
20 order and we'll go from there. And you're right, it is a
21 massive undertaking. That's one of the things that sort of are
22 stuck in my craw, one of the things that makes federal
23 litigation so darn expensive is that we make you do those kinds
24 of things, but it is helpful to be able to look that we file,
25 to try the case -- difficult --

1 (Inaudible crosstalk.)

2 MR. OSTFELD: Well, Your Honor -- I am sorry, Your
3 Honor, I didn't mean to interrupt.

4 On that point, I think there are two topics that we've
5 discussed with plaintiffs where we feel perhaps they would be
6 less helpful in the context of a jury trial, which is the trial
7 briefs and the statement of legal issues. Or at least having
8 both of them. So we -- that might be something where some
9 guidance from the Court might assist us.

10 In the context of a jury trial, what are you looking
11 for from us on the statement of legal issues and on the trial
12 briefs?

13 JUDGE KUGLER: Trial briefs are to alert the Court to
14 what evidentiary disputes might come up.

15 Now, in limine motions usually, but not always, cover
16 just about all that ground. But there might be some other
17 things that, you know, it's good to alert the Court that are
18 coming.

19 Legal issues really is going to be tied in with the
20 requested charge. What do you want me to tell the jury about
21 this case? What's the law that we're going to tell the jury
22 about this case?

23 I anticipate in this case it's going to be a pretty
24 long jury charge. There's a lot of issues. But that's really
25 what I'm looking for, to get a head start on those kinds of

1 issues.

2 MR. OSTFELD: Thank you, Your Honor. That's very
3 helpful. I think that will save a lot of time and space if we
4 narrow those to those particular uses.

5 JUDGE KUGLER: And so I'm not saying that if you don't
6 raise it in your trial brief, you can't raise it at trial. I
7 mean, things happen. You know, I mean, everybody knows that
8 once you start trial, all the planning you've done can go right
9 out the window because people say things that no one expects.
10 I get that.

11 But it is helpful for me to know before we start some
12 issues that may arise so I can be prepared for them. Okay?

13 MR. OSTFELD: Yes.

14 MR. SLATER: Yes.

15 JUDGE KUGLER: All right. Anything else you want to
16 talk to me about before we talk to Judge Vanaskie?

17 MR. SLATER: I don't think that the plaintiffs have
18 any other issues that are -- that need to be addressed today or
19 decided today. I can update Your Honor to tell you on the
20 issue of the updates to indemnifications, et cetera, we've been
21 getting responses from a number of the defendants. Defense
22 groups have said they're willing to do it, they're going to do it.
23 So there's really no issue right now because it seems that
24 everybody's willing to do so.

25 So we're hoping that we're going to get those updates

1 shortly. Some of them we already have. And then if there's
2 any issues, we can let Your Honor know, but we obviously
3 thought it was important to know if there's been any changes
4 because the subjects of indemnification has been a subject that
5 we've been dealing with more recently, so we thought it would
6 be good to know where everybody stands currently.

7 JUDGE KUGLER: Sounds like that's under control for
8 the time being.

9 MR. SLATER: Yes, looks that way.

10 JUDGE KUGLER: All right.

11 Judge Vanaskie, anything you want to say? Anything
12 you need to get involved with?

13 JUDGE VANASKIE: I thought there were two issues left
14 to address to me. Maybe I'm wrong on that.

15 One deals with the status of the wholesalers' CMO 32
16 productions and the other was whether you need to leave to move
17 to compel production of the retailer sales data. I'm not sure
18 where either issue stands now.

19 MR. STANOCH: Your Honor, this is David Stanoch for
20 the plaintiffs. I can tackle the status of wholesalers' CMO 32
21 productions.

22 JUDGE VANASKIE: Okay.

23 MR. STANOCH: This simply relates to the cost and
24 profits data, and we just -- it's been quite some time and we
25 laid out in our letter -- we're not beating a drum here, but we

1 also don't want things to fall through the cracks. And we're
2 not pointing fingers at wholesalers, but we think that given
3 the passage of time, even with the work that's purportedly
4 required to prepare the data, we think we might benefit from
5 some deadline for production with input from wholesalers so we
6 at least have a target and know where we're going and where
7 we're heading and what the timeline might be.

8 JUDGE VANASKIE: All right.

9 Mr. Geoppinger, do you want to address that issue?

10 MR. GEOPPINGER: Yes. Good afternoon, Your Honor.

11 JUDGE VANASKIE: Good afternoon.

12 MR. GEOPPINGER: As we discussed previously when we
13 talked about this with the plaintiffs and the Court, you know,
14 there's not data on profits that's kept in the ordinary course
15 of business by the wholesaler. So what we discussed was a
16 proxy formula that everybody agreed would be something that
17 we'd attempt to put together instead and that it be ultimately
18 expert exercise.

19 The wholesalers have done the legwork on that, Your
20 Honor. We're ready to sit down with the plaintiffs and -- as
21 we discussed before, sit down with them, talk about it, tell
22 them what our formulas are, explain them, and we can do so next
23 week.

24 JUDGE VANASKIE: Mr. Stanoch?

25 MR. STANOCH: We're happy to talk to them next week.

1 We received that update, perhaps unsurprisingly, right before
2 the CMC. I would just be loathed to kick the can, Your Honor,
3 and we talk to them and then we may not have anything close to
4 a deadline.

5 And I'm not pointing fingers again, Judge, but I'll
6 just say, cost and profits, that's defendants' burden, not
7 ours. So we're certainly being very sensitive and
8 accommodating here, we're not trying to be unreasonable. We
9 show revenues, they're going to want to show a lesser amount.
10 We understand that this is part of what they want to do, so --
11 this is not just us pushing, this is for the good of both sides
12 trying to get this information fronted so it's out there and
13 there's no surprises.

14 So I'd still ask Your Honor to consider a deadline,
15 even a short deadline, for the production. And if we need to
16 agree to move it back, I'm certainly open to it. There's
17 certainly plenty of folks on my side who have a lot coming up
18 in the next few weeks, anyway.

19 JUDGE VANASKIE: Why don't you meet and confer next
20 week and get a letter report to me by next Friday and see if
21 you can agree on a deadline or at least exchange competing
22 proposals or schedules, and we'll go from there. And then
23 we'll move forward.

24 MR. STANOCH: Very good, Your Honor.

25 MR. GEOPPINGER: Thank you, Your Honor.

1 JUDGE VANASKIE: The other item I had, and you can
2 correct me if I'm wrong, but that is a motion to compel
3 retailer sales data.

4 And who's addressing this issue?

5 MR. PAREKH: Behram Parekh, Your Honor, for plaintiff.

6 I think there are two issues here. One is, you know,
7 we basically want the same data that we got for the Valsartan
8 litigation in terms of class member data, retailer sales data
9 and things like that, and it's our understanding that the
10 defendants would like a court order requiring them to produce
11 that data because it includes, you know, personal health
12 information.

13 The second issue is that -- and I'll let Ms. Kapke
14 speak for herself on this, but our understanding of the issue
15 is that some of the retailers are not -- even though they're
16 named in the class action master complaint, don't currently
17 have a specific individual class representative that
18 corresponds with that retailer's purchase, and so their
19 position is that they're not really a party and, therefore,
20 would need a third-party subpoena issued to them in order to
21 have any obligation to produce those records.

22 JUDGE VANASKIE: Is it you, Ms. Kapke?

23 MS. KAPKE: Yes, Your Honor.

24 JUDGE VANASKIE: Am I pronouncing your name correctly?

25 MS. KAPKE: It's Kapke. You got it close enough.

1 JUDGE VANASKIE: Sorry.

2 MS. KAPKE: No, that's okay.

3 So there's two issues, as was said. The first is that
4 plaintiffs are not exactly asking for the same data in the same
5 courses they did with respect to Valsartan. They're asking for
6 everything now, before certification, before a settlement
7 class, before there's even been any discovery of class reps.

8 And so we don't think that -- we think there are a lot
9 of issues associated with that. And, in particular, we think
10 that there are some issues under HIPAA and whether that's the
11 minimum necessary. And so we would just like the opportunity
12 to brief that with respect to the producing PHI now.

13 I don't think it's appropriate to produce
14 precertification, especially because we could redact names. We
15 had to repull data because we anonymized the first time. I
16 think we could potentially redact instead of anonymize so we
17 could make the production after a potential certification more
18 easily.

19 But, again, I would suggest that we just brief that
20 issue to Your Honor down the road and potentially have a
21 hearing stating our objections, stating the law under HIPAA. I
22 think all of us just want to be very, very cognizant of the
23 rules whenever it comes to producing PHI, particularly
24 precertification. In Valsartan we did not produce any PHI
25 prior to certification.

1 The second issue is one that other counsel for
2 retailers may want to speak up and talk about, but again, I
3 would put this in the same category as maybe we need to brief
4 this, maybe we don't. There are some retailers who are not in
5 these cases and I think that's a different posture than a
6 defendant who there is a class rep who has asserted claims
7 against that retailer defendant.

8 And so, you know, there may be room for negotiation.
9 I can't speak for the defendants that are in that position, but
10 I think what would, again, make sense is give us time to talk
11 to our clients, communicate plaintiffs' position on this to
12 them, see if there's something we could work out, see if, you
13 know, a subpoena is the appropriate route. And plaintiffs can
14 give a subpoena and they will produce a subpoena. I think
15 there are a number of different things.

16 But ultimately, we need a little bit more time to
17 confer with our clients on this and brief the issue before Your
18 Honor.

19 JUDGE VANASKIE: How much more time do you need,
20 Ms. Kapke?

21 MS. KAPKE: I think that's a good question. I would
22 say we could brief this in a couple of weeks. I don't think we
23 need a huge amount of time.

24 But I do -- I'm fine with a reasonable schedule to
25 brief this and, you know, have the opening briefs be due in a

1 couple of weeks.

2 JUDGE VANASKIE: Mr. Spung, did you want to be heard
3 on this?

4 MR. SPUNG: Yeah. Good afternoon, Judge Vanaskie.
5 James Spung representing Pharmacy Defendant Express Scripts.
6 I'm probably one of those pharmacies that Ms. Kapke was
7 referring to that's a little bit differently situated perhaps
8 from some of her clients.

9 But the main point here is that I don't believe
10 there's anything we need to belabor with you today. You know,
11 counsel for plaintiffs and we conferred recent -- just recently
12 as two days ago, and I think we're having a productive
13 discussion given all of our different positions.

14 I'm not even sure what it is we need to brief yet, so
15 what I would say is I think probably the next few weeks we
16 could meet and confer and continue to meet and confer. And
17 then if needed, we could raise this at some point. Two weeks
18 to brief something might be a little fast, speaking for myself
19 and probably there are other pharmacy defendants that are
20 similarly situated just because we just haven't advanced very
21 far with the -- but we understand the issue.

22 And to clarify, again, not to belabor, but to clarify,
23 it's not just that there's defendants that are named that
24 there's no class representative with a traceable injury to
25 them, there's also in these Losartan/Irbesartan cases,

1 Valsartan pharmacy defendants that aren't named at all.

2 And so we think that's just a different posture that
3 we need to work out. And again, we're working it out. I think
4 we are engaging and speaking first and making progress here,
5 but we just need some more time.

6 JUDGE VANASKIE: Mr. Parekh?

7 MR. PAREKH: Yeah. We just wanted to raise this and
8 just more to flag this issue to Your Honor as it's coming down
9 the pike. We didn't intend Your Honor to rule on anything
10 today, but so that you know that it will be coming and that
11 we're working out between us what we need to brief and what we
12 can submit.

13 JUDGE VANASKIE: Would it be acceptable if I required
14 a letter report by February 16th in terms of where -- you know,
15 the status of this particular issue?

16 MR. PAREKH: Sure. I'm sure we could submit something
17 short that just says these are, you know, what we've agreed to
18 and this is the process.

19 JUDGE VANASKIE: And what might still remain in
20 dispute, right?

21 MS. KAPKE: I think that's a good idea. We could
22 submit that letter, and if there are disputes following that,
23 we could set up a proposed briefing schedule in that letter.

24 JUDGE VANASKIE: All right. So we'll require a letter
25 report on this issue by February 16th.

1 That's all I understood was before me today. Am I
2 missing anything?

3 (No response.)

4 JUDGE VANASKIE: All right. Judge Kugler, are you
5 still there?

6 JUDGE KUGLER: I'm here.

7 JUDGE VANASKIE: All right. I think I'm finished.

8 JUDGE KUGLER: Well, thank you, Judge Vanaskie. We'll
9 pencil in March 13th to come to the courthouse. We'll enter
10 the pretrial order. We'll talk about any in limine motions we
11 can talk about that day and any remaining issues. Okay? We'll
12 start at 11:00 a.m. that day.

13 MR. SLATER: Thank you.

14 JUDGE KUGLER: All right. Anything else from anybody?

15 (No response.)

16 JUDGE KUGLER: Thank you. Yeah, Go ahead.

17 MS. SMITH: I'm sorry, Judge. This is Loretta Smith.
18 Do you want to identify the next TMC date?

19 JUDGE KUGLER: It will be that date, March 13th.
20 We'll do everything then.

21 MS. SMITH: Okay.

22 JUDGE KUGLER: Okay?

23 MS. SMITH: Thanks.

24 JUDGE KUGLER: I don't think there's going to be much
25 left to talk about at that point.

1 Thank you, everybody.

2 (Matter adjourned at 1:41 p.m.)

3

4 - - - - -

5

6 I certify that the foregoing is a correct transcript
7 from the record of proceedings in the above-entitled matter.

8

9 /S/ Sharon Ricci, RMR, CRR
10 Official Court Reporter

11

12 February 1, 2024
13 Date

14

15

16

17

18

19

20

21

22

23

24

25